

House Bill 150 (COMMITTEE SUBSTITUTE)

By: Representatives Bruce of the 61st, Pruett of the 149th, Roberts of the 155th, Burns of the 159th, Lindsey of the 54th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to the Fair Business Practices Act, so as to change provisions relating to prohibited telemarketing and Internet activities; to provide for definitions; to prohibit certain persons from collecting a fee for removing certain individuals' arresting booking photographs from a website; to change provisions relating to acts exempt from the part; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to the Fair Business Practices Act, is amended in Code Section 10-1-393.5, relating to prohibited telemarketing, Internet activities, or home repair, by adding a new subsection to read as follows:

“(b.1)(1) As used in this subsection, the term:

(A) 'Photograph' means a photograph of a subject individual that was taken in this state by an arresting law enforcement agency.

(B) 'Subject individual' means an individual who was arrested and had his or her photograph taken and:

(i) Access to his or her case or charges was restricted pursuant to Code Section 35-3-37;

(ii) Prior to indictment, accusation, or other charging instrument, his or her case was never referred for further prosecution to the proper prosecuting attorney by the arresting law enforcement agency and the offense against such individual was closed by the arresting law enforcement agency;

(iii) Prior to indictment, accusation, or other charging instrument, the statute of limitations expired;

(iv) Prior to indictment, accusation, or other charging instrument, his or her case was referred to the prosecuting attorney but was later dismissed;

(v) Prior to indictment, accusation, or other charging instrument, the grand jury returned two no bills;

(vi) After indictment or accusation, all charges were dismissed or nolle prossed;

(vii) After indictment or accusation, the individual pleaded guilty to or was found guilty of possession of a narcotic drug, marijuana, or stimulant, depressant, or hallucinogenic drug and was sentenced in accordance with the provisions of Code Section 16-13-2, and the individual successfully completed the terms and conditions of his or her probation; or

(viii) The individual was acquitted of all of the charges by a judge or jury.

(2) Any person who is engaged in any activity involving or using a computer or computer network who publishes on such person's website a subject individual's arrest booking photograph for purposes of commerce shall be deemed to be transacting business in this state. Within 30 days of the sending of a written request by a subject individual, including his or her name, date of birth, date of arrest, and the name of the arresting law enforcement agency, such person shall, without fee or compensation, remove from such person's website the subject individual's arrest booking photograph. Such written request shall be transmitted via certified mail, return receipt requested, or statutory overnight delivery, to the registered agent, principal place of business, or primary residence of the person who published the website. Without otherwise limiting the definition of unfair and deceptive acts or practices under this part, a failure to comply with this paragraph shall be unlawful."

SECTION 2.

Said part is further amended by revising paragraph (2) of Code Section 10-1-396, relating to acts exempt from part, as follows:

"(2) Acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station, or website in the publication or dissemination of:

(A) News or commentary; or

(B) An advertisement of or for another person, when the publisher, owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, or did not have a direct financial interest in the sale or distribution of the advertised product or service."

60 **SECTION 3.**

61 This Act shall become effective upon its approval by the Governor or upon its becoming law
62 without such approval.

63 **SECTION 4.**

64 All laws and parts of laws in conflict with this Act are repealed.